Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 224 of the Act	)	**WC Docket No. 07-245**
A National Broadband Plan for our Future	)	**GN Docket No. 09-51**

TO: THE COMMISSION

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION OF THE COALITION OF CONCERNED UTILITIES

Consumers Energy Company
The Detroit Edison Company
FirstEnergy Corp.
Hawaiian Electric Company, Inc.
NSTAR Electric Company
Pepco Holdings, Inc.
Northern States Power Company (a Minnesota Corporation)
Northern States Power Company (a Wisconsin Corporation)
Public Service Company of Colorado
Southwestern Public Service Company

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Dated: August 22, 2011

The *Coalition of Concerned Utilities* is a diverse group of electric utilities currently serving approximately 21 million consumers in the following 17 states (plus D.C.): Colorado, Delaware, the District of Columbia, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Virginia, West Virginia and Wisconsin. They own, in whole or part, more than nine million distribution poles. While not opposing the entirety of the Commission's recent pole attachment decision, they share a common concern that several particular aspects will be impossible for electric utilities to implement and will generate countless disputes. They urge the Commission to reconsider limited elements of the decision and to make them more workable in the real world for the benefit of attachers, the Commission and electric utilities alike.[1]

The Commission's decision completely revamped decades of pole attachment regulation and at the same time upended joint use relationships that have been in existence in some cases since the early 1900's. It would be absolutely astonishing if the Commission got each and every single aspect of its decision "right."[2]

The ten utilities in the *Coalition* have been operating and maintaining their distribution systems for decades and fully understand all relevant operational issues. The *Coalition's* proposed changes to the new pole attachment rules will allow the process to run more smoothly,

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[1] A number of commenters opposing the *Coalition's* request for reconsideration note that this proceeding has been years in the making, and they complain that the *Coalition* has presented nothing "new." *See* CTIA Opposition to Petition for Reconsideration, WC Docket No. 07-245, 1 (Aug. 10, 2011) ("*CTIA Opposition*"); The National Cable & Telecommunications Association's Opposition to Petition for Reconsideration, WC Docket No. 07-245, 12 (Aug. 10, 2011) ("*NCTA Opposition*"). But there is no requirement that the *Coalition* present anything "new" at this point. Rather, it need only be shown that a material error or omission was made in the original decision, and the Petition points out many. *See WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. 1965), *cert. denied*, 383 U.S. 967 (1966); *General Motors Corp. and Hughes Electronics Corp.*, Order on Reconsideration, 23 FCC Rcd 3131, ¶ 4 (Jan. 15, 2008); 47 C.F.R. § 1.106(c).

[2] *See NCTA Opposition* at i.

with fewer disputes, thus supporting the Commission's ultimate goal of facilitating broadband deployment.

As explained below, the Oppositions include numerous misstatements about how electric utilities are operated and show little understanding of how the rules will work in the real world of electric utilities.[3] The common sense changes proposed by the *Coalition* will alleviate disputes and improve implementation of the new pole attachment regime. By addressing real world conditions and common concerns, the Commission on reconsideration can make its pole attachment rules more predictable, more reliable and easier to implement.

Electronic Notification. A single electronic notification system – as the *Coalition* has requested – would greatly facilitate the attachment process and allow more efficient monitoring of the status of requests for all parties involved.[4] It is inexplicable why there would be any opposition to this proposal, yet several attachers offered vague objections that show no understanding of how this proposal will facilitate the process and alleviate disputes to the benefit of all involved.[5]

[3] *See, e.g.*, Opposition of Sunesys, LLC to Petition for Reconsideration, WC Docket No. 07-245, 8 (June 23, 2011) ("*Sunesys Opposition*") ("remedying the preexisting violations should not take long").

[4] It would simplify administrative burdens in a host of areas by providing a time/date stamp of when the notifications occurred, when and to whom work was assigned, and when it was completed. This type of data would be extremely useful in verifying compliance with the Commission's new deadlines. A single electronic system that can be accessed by multiple parties is obviously more efficient than filing paper or multiple e-mails, which contain less detail and run a far greater risk of error.

[5] *See* Opposition of the DAS Forum, WC Docket No. 07-245, 12 (Aug. 10, 2011) ("However, these systems are not available nationwide and could potentially add delay and expense to the make-ready process."); *Sunesys Opposition* at 11-12 (arguing that attachers need not participate in NJUNS or any other electronic notification system because utilities already can easily reach attachers "unless the utilities have failed to keep good records."). Fortunately, AT&T, NextG and even tw telecom see the value of such notification systems. *See* AT&T Inc.'s Response to Petitions for Reconsideration, WC Docket No. 07-245, 7 (July 5, 2011) ("*AT&T Opposition*"); Opposition of NextG Networks, Inc. to Petition for Reconsideration, WC Docket No. 07-245, 20 (Aug. 10, 2011) ("*NextG Opposition*"); Opposition of tw telecom, inc. to the Petition for Reconsideration, WC Docket No. 07-245, 18 (Aug. 10, 2011) ("*tw telecom Opposition*"). NextG claims, however, that pole owners already can somehow force attachers to use these notification systems so there is no need for the Commission to say anything about it. *See NextG Opposition* at 20. If that were true, of course, the *Coalition* would not have made its request.

Reimbursement for Relocation. While some attachers seem to agree with the *Coalition* that utilities should be reimbursed for expenses when they are forced to move existing attachers,[6] others like NCTA claim that, "[t]oday's pole attachment agreements adequately address these issues with required non-recurring charges for work performed by the utilities and broad indemnification provisions."[7] NCTA provides no support for this claim, and in the *Coalition's* experience pole owners often do not have the contractual right to move existing attachers. Today's pole attachment agreements also do not adequately address reimbursement for these expenses. Commission guidance is needed to avoid disputes.

Liability for Relocation. Under the new rules, not only the pole owner but the new communications attacher may for the first time be authorized to move existing attacher facilities. Under these completely new circumstances, pole owners must be assured that they do not incur liability for these forced relocations. NCTA claims that the indemnity provisions in existing contracts are sufficient to cover these new contingencies,[8] but, as noted, existing agreements do not authorize pole owners to move attacher facilities, nor are we aware of third party attachment agreements allowing a new cable or CLEC attacher to move an existing attacher's facilities. Commission guidance is needed to avoid disputes.

Stopping the Clock. The "good and sufficient cause" standard that will allow utilities to "stop the clock" on the make-ready deadlines is helpful but certain to be interpreted in far different ways by communications attachers and utility pole owners. The *Coalition* has asked

[6] *See tw telecom Opposition* at 18 ("This appears to be a fair request since pole owners should themselves not be held responsible for such costs."); *AT&T Opposition* at 8 ("AT&T agrees that it would help with negotiations for these agreements if the Commission made it clear that under these circumstances the pole owner has a right to be appropriately reimbursed.").
[7] *NCTA Opposition* at 11.
[8] *See id.* at n. 46 ("Such indemnity terms often contain specific allocations of responsibility. For example, they may hold a utility responsible for gross negligence or willful misconduct when the utility is moving third party equipment.").

for clarification on several of the most common causes for make-ready delays with an eye toward eliminating disputes about whether those types of delays are justified.

> *Bad Route Designs*. Inadequate route designs are a common problem within the attachers' control and should be sufficient to stop the clock. NCTA and Windstream disagree, saying that pole owners can deny access for generally applicable engineering reasons and the clock will restart if a new application is filed.[9] Sunesys contends that the problem is somehow caused by utilities, because inadequate route design "is something utilities should flag early on . . . ."[10] Comments like these simply invite challenges.[11] Obviously, Commission guidance on this issue is sorely needed to avoid disputes.
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> *Permits*. A similar misunderstanding exists with respect to the need for utilities to obtain government permits for some of this work. Sunesys claims that it would be "extremely rare, at best" for utilities to need any government permits or private easements.[12] Permits, in fact, are required in a large number of circumstances, including any time a pole is replaced or installed for the first time, and can significantly delay the process.[13]
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> *Preexisting Violations*. Some attachers mistakenly believe that correcting pre-existing violations is not time-consuming,[14] which in the *Coalition's* view is nonsense.[15] Other attachers believe that utilities should simply fix the violations themselves and allocate cost responsibility later, which would be counterproductive from the utility perspective because it would eliminate the proof of who caused the violation and encourage more disputes.[16] To resolve delays and disputes over safety violations, the Commission should adopt the reasonable presumptions proposed by the *Coalition*.[17]

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[9] *See* Opposition of Windstream Communications Inc. to the Petition for Reconsideration, WC Docket No. 07-245, 16 (Aug. 10, 2011) (citing 47 U.S.C. § 224(f)(2)) ("As noted above, electric companies also are permitted to deny access to an attacher for 'generally applicable engineering purposes,' which would encompass problematic route design.") ("*Windstream Opposition*"); *NCTA Opposition* at n. 32 ("If an applicant has to reroute and apply for other poles, the rules already provide that the clock will restart. Therefore, the rules already address the utilities concerns on this point.").

[10] *Sunesys Opposition* at 9; *see also tw telecom Opposition* at 12-13 ("utilities that are concerned about this eventuality should provide proper guidance to prospective attachers as to the route design information that must be included in the application. Any route design issues can then be resolved before the timeline clock starts, thereby obviating the need to stop the clock later in the process.").

[11] *See* Declaration of Bruce D. Bugbee, Director of System Engineering and Protection, Consumers Energy, at ¶¶ 16-23 ("*Bugbee Declaration*"), attached hereto at Exhibit A. This Declaration, along with the Declaration of Daniel J. Dunlop, Supervising Engineer in the Joint Use Department at Detroit Edison ("*Dunlop Declaration*"), attached hereto at Exhibit B, provide factual rebuttals to arguments raised in the Oppositions.

[12] *Sunesys Opposition* at 8.

[13] *Bugbee Declaration* at ¶¶ 27-31.

[14] *See, e.g., Sunesys Opposition* at 8.

[15] *See Bugbee Declaration* at ¶¶ 39-50; *Dunlop Declaration* at ¶¶ 19-28.

[16] *See NCTA Opposition* at 8.

[17] Petition for Reconsideration of the Coalition of Concerned Utilities, WC Docket No. 07-245, 14 (June 8, 2011) ("*Coalition Petition*") ("*First*, to the extent that an unauthorized attachment exists on the pole, the presumption should be that the unauthorized attacher caused the safety violation. *Second*, the attacher whose attachment is not

Seasonal Storms. Reconsideration also is needed to clarify that seasonal storms can be sufficiently severe as to justify stopping the clock. Attachers believe that seasonal storms are "routine,"[18] but seasonal storms are anything but business as usual for utilities and can tie up personnel for a week or more.[19]

Non-Section 224 Attachers. The deadlines should not apply to attachers whose attachments are not regulated by Section 224 (fire departments, police departments, highway departments, school districts, municipalities, and the like). Communications attachers, with the exception of pole owner AT&T, claim that lack of statutory jurisdiction over these entities should not be a problem.[20] Windstream also argues that as a pole owner it "may" have contracts to allow such relocations and rearrangements.[21] But there are many instances in which pole owners have no contractual right to move non-224 attachers. Even more rare would be an agreement allowing a cable company or CLEC to move a non-224 attacher. Without statutory authority or a contract right to move these types of entities, there is no legal rationale to compel them to move. The make-ready rules cannot apply to them.[22]

Pole Replacements. Some attachers completely misconstrue the 11th Circuit's *Southern* decision as requiring a pole owner to replace poles for attachers in any situation where it would

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in compliance with the rules should bear the responsibility to pay to correct the violation (*i.e.*, the attachment should be taken 'as found'). *Third*, the deadline clock should not start to 'run' under these circumstances until the safety violation has been fixed by the causer.").

[18] *See, e.g., Sunesys Opposition* at 8 (stating that utilities can "weather common seasonal storms and still comply with the Order.").

[19] *Bugbee Declaration* at ¶¶ 32-38.

[20] *See NCTA Opposition* at 7; *tw telecom Opposition* at 8; *NextG Opposition* at 12-13.

[21] *Windstream Opposition* at 13.

[22] The Commission should also rule that it lacks jurisdiction over pole owners and their relationship with non-Section 224 attachers. To interpret the rule as the attachers suggest would essentially require non-224 attachers to comply with the FCC's make-ready deadlines. This lack of jurisdiction is even more clear when examining the attachers' interpretation that the new rule allows a new communications attacher to move a non-224 attacher, which is an activity that does not include the pole owner at all. *See Report and Order and Order on Reconsideration*, FCC 11-50, n. 117; Implementation of Section 224 of the Act (WC Docket No. 07-245); A National Broadband Plan for Our Future (GN Docket No. 09-51), April 7, 2011 ("*April 7 Order*") ("The record does not indicate the extent to which governmental attachments are implicated in make-ready delays in the communications space. In any event, the ability to hire contractors need not remove every impediment to attachment to every pole to be a meaningful remedy for attachers.").

replace a pole for itself.[23] But this "nondiscrimination" argument is precisely what the court struck down.[24] Others claim that even if the Commission has no authority to require pole replacements, the deadlines should apply if the utility decides to replace a pole.[25] But since the Commission may not lawfully require a utility to expand capacity,[26] it likewise may not dictate how quickly a utility must do it. Still others mistakenly contend that pole replacements are routine and can be accommodated easily within the new timelines.[27] Pole replacements take considerable time, however,[28] and there would be little incentive for utilities to install new poles voluntarily if the deadlines were to apply to them.[29]

Pole Top Antenna Access. Wireless attachers oppose the *Coalition's* request to allow pole owners to prohibit all wireless attachments on pole tops, claiming it would give the pole owner too much control.[30] The goal of the *Coalition's* request, however, is to confirm utility

[23] *See* Time Warner Cable Inc.'s ("TWC") Opposition to Petition for Reconsideration, WC Docket No. 07-245, 7-8 (Aug. 10, 2011) ("*TWC Opposition*") ("Section 224(f)(2) thus allows a utility to deny access only when there is both insufficient capacity and the utility is acting on a nondiscriminatory basis. Consequently, if a utility would have replaced the pole to meet its own needs, a denial of a third party's attachment request is not 'non-discriminatory.'"); *NCTA Opposition* at 9-10 ("Under section 224(f)(2) of the Communications Act, the Commission must ensure that utilities' claims of insufficient capacity on existing poles are legitimate, and that utilities do not discriminate in denying access where such insufficient capacity is found to exist.").

[24] *Southern Co. v. FCC*, 293 F.3d 1338, 1346 (11th Cir. 2002) (citing First Report and Order, 11 FCC Rcd 15499, ¶1157 (Aug. 1, 1996)) ("The FCC counters this argument by noting that many utilities now use their poles to support thriving telecommunications businesses of their own . . . and suggests that the nondiscrimination principle that motivated the 1996 Telecommunications Act mandates that the FCC prohibit a utility from 'favoring itself over other parties with respect to the provision of telecommunication or video programming services.' . . . The FCC's position is contrary to the plain language of § 224(f)(2)."). TWC also argues that *Southern Company* imposes a "crucial limitation" in that the parties must agree that insufficient capacity exists. *TWC Opposition* at 7. It is impossible to see how this is any limitation at all, much less a crucial one, since no entity can unreasonably claim that capacity exists on a pole that does not have any.

[25] *See TWC Opposition* at 5-6; *Windstream Opposition* at 14.

[26] *See April 7 Order* at ¶ 95.

[27] *See NextG Opposition* at 14; *Windstream Opposition* at 14.

[28] *See Bugbee Declaration* at ¶¶ 24-26.

[29] TWC claims that "the entire guideline would be eviscerated" if attachers could not force utilities to replace poles. *TWC Opposition* at 6. Attachers, however, often opt on their own to install their facilities underground to avoid the cost of pole replacements for those poles that lack sufficient capacity.

[30] *See AT&T Opposition* at 6 (citing 47 U.S.C § 224(b)) ("If this were not enough, the proposed blanket ban on pole-top attachments would seem to deny the Commission the right to evaluate the propriety of the electric utility's assessment. The Commission will not be able to fulfill its statutory obligation under Section 224 of the Act to 'hear and resolve complaints' concerning the rates, terms, and conditions of pole attachments, which must logically include whether access is being properly denied."); *see also NextG Opposition* at 5.

control over essential elements of its own distribution system and to avoid FCC complaints. If a utility in its judgment prohibits even its own antennas on pole tops due to safety, reliability, or generally applicable engineering concerns, that decision should be honored by the FCC.[31]

Number of Poles Subject to Deadlines. Some communications attachers shrug off the fact that attachment requests under the new deadlines could overwhelm a utility by resulting in 6 or 7 times its historical make-ready work. Their solution is for the utility to staff-up for unanticipated make-ready projects or to hire more contractors.[32] This "solution" makes no sense in the real world of utilities,[33] where dormant staff is unrealistic and there is a finite number of qualified personnel to handle this kind of work.[34] Rather than imposing deadlines that will assuredly fail and result in Enforcement Bureau complaints, the Commission should modify the deadlines to apply to pole requests of a more reasonable size.[35]

Delay Implementation of the Deadline. Although attachers oppose the *Coalition's* request to delay implementation of the deadline,[36] this proposal again is designed to avoid

[31] CTIA contends that because utilities allow wireless attachments on the top of transmission towers where they can charge thousands of dollars per month, there is really no safety concern with attachments of wireless antennas to the top of distribution poles. *See CTIA Opposition* at 5. This ignores the many differences between such installations, as explained by Mr. Bugbee. *See Bugbee Declaration* at ¶¶10-15.

[32] *See NextG Opposition* at 9; *Windstream Opposition* at 2, 8-9.

[33] *See Dunlop Declaration* at ¶¶ 14-17. In addition, from a legal standpoint, requiring utilities to ramp up personnel and to hire contractors is akin to requiring utilities to expand capacity, which is prohibited by 47 U.S.C. § 224(f)(2) and far beyond what Congress authorized in the Pole Attachment Act.

[34] TWC contends that the deadlines should better match what utilities are able to handle: "[t]he timelines should only serve to provide meaningful deadlines for the level of work that utilities are already handling;" and "[t]he outlier cases should not determine the baseline for make-ready in the majority of cases." *TWC Opposition* at 3. The *Coalition* agrees.

[35] Some attachers argue that New York and Connecticut have imposed slightly more strict deadlines. *See NextG Opposition* at 10; *NCTA Opposition* at 5. The deadlines in these states are the most stringent in the country, and apply only to a handful of utilities following lengthy deliberations by the state public service commission which considered the conditions, experiences, and needs peculiar to each state. Meanwhile, four of the six states addressing make-ready deadlines (New Hampshire, Oregon, Utah and Vermont) opted for regulations much less stringent than what the FCC has ordered, based on the understanding that such requirements are not workable or fair in those states. The Commission's order therefore would impose requirements in the 30 states under its jurisdiction that four out of six states determined are unworkable.

[36] *See, e.g., tw telecom Opposition* at 9-11.

disputes by allowing utilities sufficient time to revise their procedures to comport with the drastically changed requirements.

Forward-Looking Standards on Boxing and Extension Arms. Pole owners should have discretion to discontinue or limit the use of boxing and extension arms going forward, regardless of past policy. That way, utilities will be free to make core safety, reliability or engineering decisions affecting their systems, and the parties and the Commission will avoid disputes concerning the extent to which the practice was allowed in the past. It will render unnecessary FCC decisions about when the use of boxing and extension arms has reached the point where it has become a safety, reliability or engineering concern.[37] It will also avoid the burden on attachers of involuntary removal of existing boxing and extension arms in order to "clear the slate" going forward.[38]

Joint Owner Issues. It appears that only one attaching entity opposed the *Coalition's* request to relieve joint owners of the obligation to develop a single attachment application and to require a single payment from attaching entities.[39] Given the lack of support for these new requirements, the Commission should eliminate them. In addition, to preserve the integrity of each joint owner's operations, each owner of jointly-owned poles should be entitled independently to adopt its own and perhaps more stringent limitations regarding boxing and extension arms.[40]

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[37] As explained in the attached Declarations, these practices raise significant safety, reliability and engineering issues. *See Bugbee Declaration* at ¶¶ 5-9; *Dunlop Declaration* at ¶¶ 6-13.
[38] *Coalition Petition* at 17-19. Requiring utilities to employ boxing and extension arms also is requiring them to expand capacity, in contravention of 47 U.S.C. § 224(f)(2).
[39] *See tw telecom Opposition* at 16-17. The Coalition previously explained how such requirements force the electric utility and ILEC joint owners to manage each other's businesses, create safety issues, are operationally impossible and would do the attacher little good anyway because attachment applications involving jointly-owned poles usually include solely-owned poles. *See Coalition Petition* at n. 43.
[40] *See Coalition Petition* at 22-23.

Safety Violation Penalties. The record in this proceeding is replete with evidence of widespread attacher safety violations, along with requests by utility pole owners for reasonable tools to combat the problem.[41] Despite this evidence, several Oppositions claim that attachers already comply with safety codes, that safety issues are being resolved anyway, and that safety violations really do not pose any particular problems.[42] As the record indicates, these contentions do not reflect the real world experiences of electric utilities.[43] Safety violations were recognized as a serious problem in Oregon and the problem of course is not unique to one state. To combat attacher indifference to safety violations, utilities should be permitted to impose the Oregon safety violation penalty of $200. This is not "double dipping," as some attachers claim, but a serious regulatory disincentive for a continuation of this longstanding practice.

Unauthorized Attachment Penalties. Comcast opposes the *Coalition's* request that Oregon's unauthorized attachment penalty be imposed without the need to revise existing agreements, arguing that unauthorized attachment provisions are just one part of a fully-negotiated agreement.[44] Unauthorized attachment penalties, however, are no different than many other new requirements in the Commission's rules, which automatically modified provisions of existing agreements to the detriment of electric utility pole owners. The Oppositions provide no compelling reason to treat unauthorized attachment penalties any differently.

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[41] *See, e.g.*, the following filings in WC Docket No. 07-245: Comments of the Edison Electric Institute and the Utilities Telecom Council ("EEI/UTC"), 55 (Aug. 16, 2010); Comments of the National Rural Electric Cooperative Association, 23-25 (Aug. 16, 2010); Reply Comments of EEI/UTC, 65 (April 22, 2008); Comments of the Coalition of Concerned Utilities, 74 (March 7, 2008); Comments of EEI/UTC, 33-34 (March 7, 2008). *See also* Comments of American Electric Power Company, Inc, GN Docket No. 09-51, 9-18 (Oct. 2, 2009).

[42] *NextG Opposition* at 4, 18-19; *TWC Opposition* at 12; Comcast Response to Petitions for Reconsideration, WC Docket No. 07-245, 7-8 (Aug. 10, 2011) ("*Comcast Opposition*"); *NCTA Opposition* at 3.

[43] *See Bugbee Declaration* at ¶¶ 39-50; *Dunlop Declaration* at ¶¶ 19-28.

[44] *Comcast Opposition* at 9.

Refunds. Refunds should not pre-date the effective date of the new rules. NCTA claims, however, that refunds dating back earlier than the date of the complaint were always allowed, it was just not the "normal" rule.[45] This is a distinction without a difference, since changing the "normal" rule without notice is the same as changing a hard and fast rule. In both cases, applying the rule to a period prior to when parties were on notice about the rule violates principles of fairness and predictability, not to mention the rule against retroactive rulemaking.[46]

WHEREFORE, THE PREMISES CONSIDERED, the *Coalition of Concerned Utilities* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

COALITION OF CONCERNED UTILITIES

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[45] *See NCTA Opposition* at 12 ("the Commission's rules did not preclude relief predating a complaint, but instead provided that remedies would 'normally' be measured from the date of the complaint. Now the rules provide that remedies will 'normally' be measured using applicable statutes of limitations.").

[46] *See Illinois Bell Telephone Co. v. FCC*, 966 F.2d 1478, 1482 (D.C. Cir. 1992) ("The rule against retroactive ratemaking has been around for some time. In *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981), the Supreme Court noted that '[n]ot only do the courts lack authority to impose a different rate than the one approved by the Commission, but the Commission itself has no power to alter a rate retroactively.' *Id.* at 578 (applying the Natural Gas Act). In so doing, the Supreme Court cited with approval our decision in *City of Piqua v. FERC*, 610 F.2d 950, 955 (D.C. Cir. 1979), wherein we noted that 'the rule against retroactivity is a cardinal principle of ratemaking: a utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle.' *Id.* at 954 (quoting *Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975)).").

EXHIBIT A

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Implementation of Section 224 of the Act	)	**WC Docket No. 07-245**
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	)	
	)	

DECLARATION OF BRUCE D. BUGBEE

I, Bruce D. Bugbee, do hereby state as follows:

1. I am the Director of System Engineering and Protection at Consumers Energy Company and have held this position since 2001.

2. As Director of System Engineering and Protection, my duties include responsibility for distribution line engineering design standards for Consumers Energy and for overseeing the joint use of Consumers Energy's poles.

3. I earned a Bachelor of Science in Electric Engineering degree from Ohio State University in 1978. I earned a Master of Science in Electrical Engineering degree from Ohio State University in 1979.

4. I have been employed by Consumers Energy since 1979.

Boxing and Extension Arms

5. As the structure owner, Consumers Energy has the legal obligation and responsibility to design, construct, maintain and operate its facilities as necessary to ensure safety, reliability, and other factors that are in the interest of its customers, the general public, and the Company.

6. Boxing and extension arms pose problems because they place obstructions on poles that block the path used by linemen who climb them.

7. Boxed poles are much more difficult to replace, and may require an interruption of the service to electrical customers that would not otherwise have to occur to replace the pole.

8. Consumers Energy objects to the use of designs that incorporate boxing poles or extension arms because they severely limit access to facilities on the pole for construction, operation and maintenance of the electric facilities.

9. Attempting to work around boxing and extension arms exposes our line workers to greater safety risks.

Wireless Attachments

10. Transmission towers are significantly different than distribution poles in that they are generally much larger structures.

11. A photograph of a typical transmission tower with an antenna attachment is attached to my Declaration as Attachment 1.

12. Transmission towers typically have larger top side widths that provide more space than distribution poles for mounting wireless attachments.

13. Compared with distribution poles, there is significantly more space for workers between the center of the tower and the electricity conductors that are attached to the tower.

14. On transmission towers, the fiber and power cables that are connected to the wireless attachments are generally run through conduits located in the center of the tower down to equipment located at ground level and do not affect a worker's ability to climb the structure.

15. Compared to wireless attachments on the top of distribution poles, transmission tower antenna installations pose a much lower risk of equipment falling into energized conductors.

Inadequate Route Designs

16. The assertion that deadlines should not be delayed if an attacher proposes an inadequate route design because "that is something utilities should flag early on" is unfounded.

17. Without an adequate design by the new attacher, the pole owner must guess the new attacher's intentions.

18. If the defect in the permit application is obvious in the initial screening process, the utility immediately rejects it.

19. However, a pole owner often cannot tell if the initial information provided in a new attacher's permit application is inadequate or not.

20. As a result, the pole owner cannot always reject a permit application until after the pole owner has accepted the application and has begun its actual field engineering analysis.

21. Common examples of route designs that might be determined to be inadequate only after a field analysis include, but are by no means limited to: (1) inadequate spacing from existing attachers at the proposed new attachment height; (2) proposed attachment height conflicts with the safety zone; (3) inadequate ground clearance, (4) lack of guying; (5) incorrect guying; (6) incorrect or inadequate route maps; and (7) the utility is not the pole owner.

22. Because of inadequate route designs, the new attacher many times must revisit the field locations in question, which can take several weeks on its part.

23. When such a revisit occurs, the utility's engineering staff must place the attacher's designs on hold and move on to other work, then return to the previous work weeks later. This process is highly inefficient and results in delays, none of which is caused by the pole owner.

Pole Replacements

24. A period of 60 days plus a 15-day grace period, or 90 days plus a 15-day grace period for wireless attachments, is often not sufficient time to perform a pole replacement or install a new pole.

25. The work associated with replacing a pole typically is far more time consuming than the work required to simply rearrange existing facilities to accommodate a new attacher.

26. Obtaining legal permission from government entities and other third parties often can consume a significant portion of the period of time allotted.

Government Permits and Private Property Easements

27. Utilities often need governmental permits or private easements to accommodate new attachers on utility poles.

28. A job that requires new or replacement poles will require at least a state or local permit for a road right of way, a new railroad crossing will require certain permits, and reconfigurations that require limiting traffic during construction typically require permits as well.

29. There are also times when a job requires forestry work due to changes to the conductor configuration or to set a taller pole, which may require negotiations with the landowner for new or additional tree trimming rights.

30. Relevant provisions of the Michigan Highway Obstructions and Encroachments; Use of Highway by Public Utilities Act of 1925 are highlighted at Attachment 2 to this Declaration. Section 247.183, subsection 13 requires that: "A telegraph, telephone, power, and other public utility company, cable television company, and municipality,

before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained."

31. Additional permitting issues faced by utility pole owners in Michigan are identified in the URL links that are listed in Attachment 3.

Seasonal Storms

32. "Common seasonal storms," which occur in Michigan throughout the year due to high winds, ice accumulation, and lightning, may result in the interruption of electric service to tens of thousands of customers at the same time.

33. The interruptions caused by common seasonal storms require the movement of all available company and contract crews throughout the utility's extensive geographic service territory to assist in the restoration of electrical service.

34. In addition, as a result of mutual assistance agreements in place with other utilities, Consumers Energy often provides assistance to neighboring utilities in other states if requested.

35. As a result, a "common seasonal storm" may impact the completion of construction projects, including communications attacher "make-ready" projects, because resources are deployed to restore electric service.

36. Such delays could easily be between 5 to 10 business days.

37. The deployment of crews outside their normal service area requires travel time, in addition to the actual work time needed to perform the service restoration work.

38. Crews that are involved in these restoration efforts must also comply with administrative requirements related to the maximum number of hours a worker is allowed to work in a day or week.

Safety Violations

39. Attachers are a very disparate group who frequently have little, if any, understanding of the NESC and the hazards associated with electrical conductors.

40. For example, some attachers do not know what the NESC is, requiring pole owners to spend a significant amount of time tutoring the attacher and answering their questions.

41. This typically results in our company not having confidence in the attachers' ability – or the attacher having an incentive – to comply with the costly safety code requirements.

42. It is misleading to claim that most cases of pre-existing non-compliance will be "technical" and that the NESC requires them to be recorded until correct, but the work can proceed.

43. All NESC violations must be taken seriously because of their potential safety consequences, and not be treated as "technical." This premise is supported by the NESC statement of purposes: "The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment ...."

44. NESC Rule 214 addresses the recording of violations that are found during inspections. While such violations must be recorded if they are not immediately corrected, Rule 214(5) also requires that "Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected or isolated."

45. Examples of pre-existing violations of high consequence include missing or inadequate pole guys, necessary for many communications attachments, which can result in poles breaking or falling, exposing the public to live electric lines.

46. In addition, low ground clearances can also endanger the public, while inadequate clearances between facilities on the pole represents safety hazards for anyone working on the pole.

47. Because it is difficult to foresee when a safety incident will occur, many of these issues should be corrected quickly.

48. The Michigan Public Service Commission's Administrative Rules contain technical standards for electric utilities that supports the notion that work on the pole cannot proceed until safety violations are corrected.

49. For example, Administrative Rule 501 provides: "The electric plant of the utility shall be constructed, installed, maintained, and operated pursuant to accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property."

50. Allocating cost responsibility for pre-existing violations is problematic, since communications attachers often unreasonably disclaim responsibility for causing violations. Removing evidence of liability by correcting pre-existing violations without first assessing cost responsibility would make this situation much worse.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on

8/22/11.
Date

Bruce D. Bugbee

HIGHWAY OBSTRUCTIONS AND ENCROACHMENTS; USE OF HIGHWAY BY PUBLIC UTILITIES
Act 368 of 1925

AN ACT to prohibit obstructions and encroachments on public highways, to provide for the removal thereof, to prescribe the conditions under which telegraph, telephone, power, and other public utility companies, cable television companies and municipalities may enter upon, construct and maintain telegraph, telephone, power or cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across or under public roads, bridges, streets and waters and to provide penalties for the violation of this act.

History: 1925, Act 368, Eff. Aug. 27, 1925;—Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972.

The People of the State of Michigan enact:

247.171 Encroachments; removal order, service; temporary permit.

Sec. 1. In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner or commissioners having jurisdiction over the road may make an order under his or their hand requiring the owner or occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within 30 days. A copy of such order shall be served upon such owner or occupant, and every such order shall specify the width of the road, the nature of the encroachment and its location with relation to the center line of the road, and the township, section and fraction thereof in which it may be: Provided, The commissioner or commissioners having the matter in charge may issue temporary permits for fences for the protection of improvements on the adjacent land.

History: 1925, Act 368, Eff. Aug. 27, 1925;—CL 1929, 4041;—CL 1948, 247.171.

Former law: See section 1 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4401.

247.171a Rights-of-way, bridges, towers, and welcome centers; use to provide travel-related information through electronic technologies.

Sec. 1a. This act does not prohibit the use of rights-of-way, bridges, towers, welcome centers, and rest stops to provide through the use of electronic technologies, including electronic kiosks, travel-related information or assistance and advance traffic information systems.

History: Add. 2002, Act 151, Imd. Eff. Apr. 8, 2002.

247.172 Encroachments; removal by commissioner, penalty, expense charged to occupant, collection by tax; limitation.

Sec. 2. If such encroachment shall not be removed within 30 days after the service of a copy of such order, such owner or occupant shall forfeit the sum of 1 dollar for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner or commissioners may proceed to remove such encroachment in such manner as to cause the least damage to the property or loss to the owner, and the person at fault shall be liable for the costs and expenses of such removal. The highway commissioner or commissioners shall keep an accurate account of the expenses incurred by him or them in carrying out the provisions hereof and shall present a full and complete statement thereof, verified by oath, together with a full and legal description of the lands entered upon, to the occupants of such lands, requiring the said occupant to pay the amount therein set forth; and in case such owner or occupant shall refuse or neglect to pay the same within 30 days after such notice and demand, the highway commissioner or commissioners shall present a duly verified copy of said statement to the township clerk of the township in which such expense was incurred, and thereupon the amount of all such costs and expenditures shall be certified to the supervisor and shall be assessed and levied on the lands described in the statement of the commissioner or commissioners, and shall be collected in the same manner as other taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within 3 months next before the making of the order for the removal thereof, or interferes with the construction, improvement or maintenance of the road.

History: 1925, Act 368, Eff. Aug. 27, 1925;—CL 1929, 4042;—CL 1948, 247.172.

Former law: See section 2 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4402.

247.173 Encroachments; denied, notice to commissioner; trespass action.

Sec. 3. If the person upon whom the copy of such order shall be served at any time before the expiration of said 30 days, by a written notice served upon the commissioner or commissioners, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner or commissioners, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4043;-CL 1948, 247.173.

Former law: See section 2 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4402.

247.174 Trespass action; brought by commissioner.

Sec. 4. Such action shall be brought by the commissioner or commissioners in his or their name of office, claiming nominal damages only in the sum of 6 cents, before any justice of the peace of the township, or of any adjoining township in the same county. The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner or commissioners demand a jury he or they shall not be required to advance the jury fee.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4044;-CL 1948, 247.174.

Former law: See sections 3 and 4 of Ch. 7 of Act 283 of 1909, being CL 1915, §§ 4403 and 4404.

247.175 Trespass action; pleadings and trial.

Sec. 5. The declaration in such action shall follow the order required by section 1 of this chapter, in describing such encroachment. The defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be, but otherwise the legal existence of the highway shall not be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4045;-CL 1948, 247.175.

Former law: See section 3 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4403.

247.176 Trespass action; trial and verdict.

Sec. 6. The trial of said action may be adjourned for not to exceed 10 days. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4046;-CL 1948, 247.176.

Former law: See section 4 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4404.

247.177 Trespass action; trial and appeal.

Sec. 7. Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner or commissioners, he or they shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner or commissioners no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships and counties.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4047;-CL 1948, 247.177.

Former law: See section 5 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4405.

247.178 Encroachment; removal by commissioner; penalty on owner or occupant for neglect.

Sec. 8. In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner or commissioners may proceed to remove the same within 10 days after such judgment, in the same manner that he may do under section 2 of this chapter, where the encroachment or the existence of the

highway is not denied, and the penalty prescribed in section 2 shall attach and continue from and after the expiration of the 30 days mentioned therein, until such encroachment be removed.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4048;-CL 1948, 247.178.

Former law: See section 6 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4406.

247.179 Encroachment; removal, interference, penalty.

Sec. 9. In all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon a highway, if such person shall, subsequent to such final judgment, by force or otherwise, interfere with any commissioner or commissioners in the performance of his or their duties under this chapter, or if such person shall replace or cause to be replaced any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding 100 dollars, or by imprisonment in the county jail not exceeding 3 months, or by both such fine and imprisonment, in the discretion of the court.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4049;-CL 1948, 247.179.

Former law: See section 6 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4406.

247.180 Loose obstructions, logs, or wood; notice to remove; removal; removal by commissioner, sale; proceeds, disposition.

Sec. 10. In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner or commissioners may notify the owner, if known, to remove the same within 2 days, and if not so removed, or the owner is unknown, the commissioner or commissioners may remove such obstruction to some convenient place, and if it has a value he or they shall hold it for 30 days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he or they may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables' sale under execution, and the expense of removal, care of property and sale shall be deducted from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4050;-CL 1948, 247.180.

Former law: See section 11 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4411.

247.181 Loose obstructions, logs, or wood; no value, compensation for removing.

Sec. 11. In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner or commissioners shall be entitled to compensation for the expense of removing it, and the expense of removal may be recovered from the owner in the name of the commissioner or commissioners in an action of assumpsit, or the same may be assessed upon any property of such owner and collected in the same manner as is provided in section 2 hereof.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4051;-CL 1948, 247.181.

Former law: See section 11 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4411.

247.182 Obstructions; road fence if dangerous, penalty.

Sec. 12. It shall hereafter be unlawful for any person, firm or corporation to erect a fence along any road, of any material which, by reason of its construction or otherwise, is dangerous in itself or by reason of causing an obstruction to the highway. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than 15 dollars, nor more than 50 dollars, or by imprisonment in the county jail for a period not exceeding 30 days or by both such fine and imprisonment in the discretion of the court.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4052;-CL 1948, 247.182.

Former law: See section 13 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4413.

247.183 Public utilities, cable television companies, and municipalities; construction and maintenance of structures; consent of governing body; construction and maintenance of utility lines and structures longitudinally within limited access highway rights-of-way; standards; charges; use of revenue; use of electronic devices within limited access and rights-of-way to provide travel-related information.

Sec. 13. (1) Except as otherwise provided under subsection (2), telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and

maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.

(2) A utility as defined in 23 CFR 645.105(m) may enter upon, construct, and maintain utility lines and structures, including pipe lines, longitudinally within limited access highway rights-of-way and under any public road, street, or other subsurface that intersects any limited access highway at a different grade, in accordance with standards approved by the state transportation commission and the Michigan public service commission that conform to governing federal laws and regulations and is not required to obtain the consent of the governing body of the city, village, or township as required under subsection (1). The standards shall require that the lines and structures be underground and be placed in a manner that will not increase highway maintenance costs for the state transportation department. The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights-of-way. The imposition of a reasonable charge is a governmental function, offsetting a portion of the capital, maintenance, and permitting expense of the limited access highway, and is not a proprietary function. The charge shall be calculated to reflect a 1-time installation permit fee that shall not exceed $1,000.00 per mile of longitudinal use of limited access highway rights-of-way with a minimum fee of $5,000.00 per permit. If the 1-time installation permit fee does not cover the reasonable and actual costs to the department in issuing the permit, the department may assess the utility for the remaining balance. All revenue received under this subsection shall be used for capital and maintenance expenses incurred for limited access highways, including the cost of issuing the permit.

(3) A person engaged in the collection of traffic data or the provision of travel-related information or assistance may enter upon, construct, and maintain electronic devices and related structures within limited access and other highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations. The standards shall require that the devices and structures be placed in a manner that will not impede traffic and will not increase maintenance costs for the state transportation department. The state transportation department may enter into agreements to authorize the use of property acquired for or designated as a highway or acquired for or designated for ancillary purposes for the installation, operation, and maintenance of commercial or noncommercial electronic devices and related structures for the collection of traffic data or to assist in providing travel-related information or assistance to motorists who subscribe to travel-related services, the public, or the department. Any revenue generated by the agreements shall be deposited in the state trunk line fund. The department may accept facilities or in-kind services to be used for public purposes in lieu of, or in addition to, monetary compensation.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4053;-CL 1948, 247.183;-Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972;-Am. 1989, Act 215, Imd. Eff. Nov. 13, 1989;-Am. 1994, Act 306, Imd. Eff. July 14, 1994;-Am. 2002, Act 151, Imd. Eff. Apr. 8, 2002 ;-Am. 2005, Act 103, Imd. Eff. July 22, 2005.

247.184 Consent of county or state to construction.

Sec. 14. In case it is proposed to construct a telegraph, telephone, power line or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced; and in case it is proposed to construct a telegraph, telephone, power line, cable television line, pipe line, wires, cables, poles, conduits, sewers or like structures, upon, over or under a state trunk line highway, or upon, over or under any bridge that the state has participated in constructing, the consent of the state highway commissioner shall be obtained before the work of such construction shall be commenced.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4054;-CL 1948, 247.184;-Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972.

247.184a Surveillance of occupied manhole; exceptions; training and duties of second employee.

Sec. 14a. (1) A person shall not enter a manhole being constructed or being used for repairs to underground utilities or remain inside of the opening unless a person is providing alert surveillance, except that a new manhole under construction is exempted if adequate steps are taken to insure safe working conditions.

(2) A person, firm, or corporation authorized or permitted to construct or repair underground facilities by

access through a manhole shall provide alert surveillance until the manhole cover is in place and no person remains in the underground facility. The second employee shall be trained in safety and first aid practices and shall be responsible for alert surveillance of the occupied manhole to afford immediate action in emergencies. The second employee could also perform other duties either above grade or in the manhole provided they did not interfere with the employees surveillance duties. This section does not preclude an employee trained in safety practices, in the absence of a second employee, from entering a manhole for a brief period of time not in excess of 20 minutes for purposes such as inspections, housekeeping, taking readings, or similar work, provided adequate steps have been taken to insure safe working conditions.

History: Add. 1978, Act 287, Imd. Eff. July 7, 1978.

247.185 Paramount rights of public; injury to trees and shrubs; regulation of rights.

Sec. 15. The construction and maintenance of all such telegraph, telephone and power lines, cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures shall be subject to the paramount right of the public to use such public places, roads, bridges and waters, and shall not interfere with other public uses thereof and nothing herein contained shall be construed to authorize any telegraph, telephone, power, or other public utility company, cable television company or municipality to cut, destroy, or in anywise injure any tree or shrub planted within any highway right of way or along the margin thereof, or purposely left there for shade or ornament or to bridge across any of the waters of this state. Nor shall anything in this section or sections 13 and 14 be construed to grant any rights whatsoever to any public utilities or cable television companies whatsoever, nor to impair anywise any existing rights granted in accordance with the constitution or laws of this state, but shall be construed as a regulation of the exercise of all such rights.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4055;-CL 1948, 247.185;-Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972.

247.186 Public utility; placing poles, fixtures, wires, or cables.

Sec. 16. In no case shall any poles or other structures be placed above the ground or road grade between the curb or road shoulder lines, or closer than 15 feet from the center line of the roadway; and in no case shall any wires, cables or other fixtures be placed, or be permitted to remain, at less height than 15 feet above any part of the traveled portion of the road.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4056;-CL 1948, 247.186.

Former law: See section 8 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4408.

247.187 Encroachments; removal, expense of removal by commissioner.

Sec. 17. Any person or persons, firm, corporation or municipality violating any of the provisions of this chapter, shall, upon written demand of the commissioner or commissioners having jurisdiction over the road, remove such encroachments, pipe lines, wires, cables, poles, conduits, sewers and like structures. If removal be not made within 30 days thereafter, then the said commissioner or commissioners shall have the right to remove the same and the person, persons, firm or corporation or municipality so violating, shall be liable for the amount of expense incurred in making such removal, to be collected in an action of assumpsit, or assessed upon the property of such person, persons, firm or corporation and collected in the same manner as other taxes are assessed and collected.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4057;-CL 1948, 247.187.

Former law: See section 9 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4409.

247.188 Obstructions to traffic; moving; permit, bond; penalty.

Sec. 18. No building, or other obstruction to traffic shall be moved across, upon or along any road without consent being first obtained from the commissioner or commissioners having jurisdiction over the road, and without first executing to such commissioner or commissioners, a bond in an amount sufficient to cover all possible damage to the road on account of such moving, to be determined by the commissioner or commissioners aforesaid, and conditioned for the payment of all such damage or injury to the road on account of such moving. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed 100 dollars or by imprisonment in the county jail for not to exceed 30 days or by both such fine and imprisonment in the discretion of the court.

History: 1925, Act 368, Eff. Aug. 27, 1925;-CL 1929, 4058;-CL 1948, 247.188.

247.189 Obstructions to traffic; left in roadway, penalty.

Sec. 19. If any building or other obstruction as aforesaid shall, in the process of moving, be left in the highway so as to interfere with the travel thereon, the commissioner or commissioners may notify the person

at fault to remove the same within 2 days, such notice to be either verbal or in writing, and if such building or obstruction be not removed pursuant to such notice the person at fault shall be liable to a penalty of 5 dollars per day for each day that the same shall remain unremoved, and after 5 days the commissioner or commissioners may proceed to remove it at the expense of the owner or owners thereof.

History: 1925, Act 368, Eff. Aug. 27, 1925;□CL 1929, 4059;□CL 1948, 247.189.

Former law: See section 10 of Ch. 7 of Act 283 of 1909, being CL 1915, § 4410.

247.190 Width of highway; encroachment does not give right to land.

Sec. 20. All public highways for which the right of way has at any time been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

History: 1925, Act 368, Eff. Aug. 27, 1925;□CL 1929, 4060;□CL 1948, 247.190.

247.191 Act inapplicable to encroachments and obstructions erected under MCL 257.1701 et seq.

Sec. 21. This act does not apply to encroachments and obstructions erected under the city motor vehicle racing act of 1981.

History: Add. 1981, Act 176, Imd. Eff. Dec. 14, 1981.

Michigan's Requirements for Licenses and Permits

1. Michigan Department of Transportation, *Are You Building on a State Highway? Do You Need a Permit?*, *available at* http://www.michigan.gov/documents/RU_Building_highway2_25500_7.pdf (last visited Aug. 17, 2011).

2. Michigan Department of Transportation, *Who Needs a Permit?*, *Frequently Asked Questions for Construction Permits*, *available at* http://www.michigan.gov/mdot/0,1607,7-151-27185-78779--F,00.html (last visited Aug. 17, 2011).

3. Michigan Department of Transportation, *Why do I need a permit to work in the state trunkline right-of-way?*, *Frequently Asked Questions for Construction Permits*, *available at* http://www.michigan.gov/mdot/0,1607,7-151-27185-78778--F,00.html (last visited Aug. 17, 2011).

4. Michigan Department of Transportation, *Notice: New MDOT Mobility Policy* (Nov. 25, 2008), *available at* http://www.michigan.gov/documents/mdot/Insturctions_to_Applicants_260406_7.pdf (last visited Aug. 17, 2011).

5. Michigan Department of Transportation, *Mobility Flowchart for Permit Activities* (Nov. 2008), *available at* http://mdotwas1.mdot.state.mi.us/public/webforms/public/2204C.pdf (last visited Aug. 17, 2011).

6. Michigan Department of Transportation, Work Zone Safety and Mobility Manual (Jan. 2010), *available at* http://www.michigan.gov/documents/mdot/MDOT_WorkZoneSafetyAndMobilityManual_233891_7.pdf (last visited Aug. 17, 2011).

7. Michigan Department of Transportation, *Utility Coordination and Accommodation*, *available at* http://www.michigan.gov/mdot/0,1607,7-151-9623_26662_26679_27267_48606-182179--,00.html (last visited Aug. 17, 2011).

8. Michigan Department of Transportation, *Frequently Asked Questions - Utility Coordination*, *available at* http://www.michigan.gov/mdot/0,1607,7-151-9623_26662_26679_27267_48606-182365--,00.html (last visited Aug. 17, 2011).

EXHIBIT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**WC Docket No. 07-245**
Implementation of Section 224 of the Act	)	
	)	**GN Docket No. 09-51**
A National Broadband Plan for our Future	)	

DECLARATION OF DANIEL J. DUNLOP

I, Daniel J. Dunlop, do hereby state as follows:

1. I am the Supervising Engineer for the Joint Use Department at The Detroit Edison Company. I have held this position for nine years.

2. Prior to this position, I worked for 16 years from 1986-2002 in the Overhead Lines Construction Standards Department for The Detroit Edison Company in various engineering capacities, eventually becoming Principal Engineer.

3. I earned my engineering degree at Lawrence Institute of Technology in 1987.

4. I have been employed in the field of joint use of electric utility poles since 1978.

5. I was an Apprentice Lineman from 1978 to 1982 and worked as a Journeyman Electrical Lineman from 1982 to 1986.

Boxing and Extension Arms

6. Boxing poles and installing cable brackets (a/k/a extension arms) creates safety concerns and add a layer of complexity that inhibits the maintainability of a pole and the electrical system.

7. Boxing a pole reduces the climbing space requirement prescribed by the NESC, and the reduced climbing clearance adversely affects electric workers as they climb through the boxed portion or over extension brackets on the pole to reach the electric zone.

8. Restricting climbing space in the communication zone by boxing a pole or using extension arms creates a safety concern for electrical workers who must then snake their way through or over these attachments.

9. The lineman's job becomes even more complex and risky trying to comply with OSHA's rules related to fall protection that prohibit the previously-accepted practice of free climbing around and over cables that are installed on brackets.

10. In addition, the restoration of electrical power following storms can be delayed when workers are required to use added safety precautions due to obstacles created by communications equipment that may prevent them from gaining unrestricted access to the electrical zone on poles.

11. A pole that is boxed in by cables and/or brackets also affects reliability and engineering, because it requires more time to replace the pole and can limit the options for the placement of a new pole.

12. The growing use of fiberglass standoff brackets by communications companies provides an additional concern because of the limited structural life expectancy of these brackets.

13. When a bracket fails, the resulting low hanging cables pose a significant hazard to the general public, particularly if they are exposed to traffic and become involved in a vehicle accident that results in broken poles, downed electrical wires, property damage, etc.

Make-Ready Deadlines

14. If the amount of upcoming work to install and permit broadband and other attachments were made publicly available by the communications attachers, a utility could anticipate how it will be affected by the work and better justify the additional staff necessary to meet a project deadline.

15. However, lacking specific information on how to make decisions of this sort, it makes no sense for utilities to staff-up for a "what if" scenario.

16. It is no simple matter to hire contractors in those instances when utilties become overwhelmed with pole attachment requests. Hiring qualified contractors can take months, and training them on company standards and expectations requires dedicated manpower and additional support from the engineering and lines departments.

17. Performing quality control inspections of third party surveys and make-ready construction also uses up scarce utility resources.

Moving Municipalities and Other Non-224 Attachers

18. It is common for projects to be delayed because a municipality, police or fire department, school district or highway department cannot meet the scheduled due date because of a lack of manpower or materials. These entities do not have an obligation to respond

timely to third party requests nor does the utility have authority to force compliance with any such request.

Correction of Safety Violations

19. Code compliance issues related to correcting an existing condition can inhibit allowing additional attachments to poles until the violator has had the chance to remedy the condition.

20. For example, if a low hanging cable is identified and the violator would only need to relocate its cable higher on the pole, the violator should be given the opportunity to do so first, otherwise the it would appear the would-be attacher is paying for violation correction as part of their make ready expense.

21. Also, when a pre-existing violation is corrected by the utility, it is very difficult after the fact to convince the violator to pay for the remedy.

22. It is misleading and inconsistent with the intent of the NESC to contend that most cases of pre-existing noncompliance are "technical," allowing them simply to be recorded and fixed later.

23. Compliance issues can easily involve a situation where eminent danger exists and immediate action should be taken to remedy the defect.

24. When a safety violation involves multiple companies or correcting a violation involves coordination between several parties resulting in a significant expense, the entity responsible for the cost typically attempts to shift blame for the violation and is reluctant to initiate a correction of the violation or pay for the utility's estimated remediation efforts.

25. Unless preexisting safety violations are corrected in advance, then allowing contractors hired by new attachers to move existing attachers will likely deteriorate the relationships between those existing attachers, because existing attachers who are in violation will want to blame the party who moved its cable for any safety violations that are later discovered.

26. It is incorrect and misleading to state that a pole owner and attachers successfully resolve all safety compliance issues in the field.

27. While such issues are sometimes resolved in the field, Detroit Edison identifies thousands of violations that need to be remedied each year that were caused by various issues, including poor workmanship, incorrect sagging of cables and ground clearances, improper guying, etc..

28. Some of the cable to ground clearance violations especially those created by land development, new subdivisions, new driveways and new roads are costly to remedy due

the need for taller poles. The violator in these instances is very reluctant to self identify violations of this type due to the cost of remediation that would befall them.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 22, 2011.
Date

Daniel J. Dunlop /TM
Daniel J. Dunlop

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Zachary A. Rothstein, do hereby certify that on this day, August 22, 2011, I caused to be served a true and correct copy of the foregoing Reply to Opposition to Petition for Reconsideration of the Coalition of Concerned Utilities, via First Class US Mail, to:

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